

**Letter of Findings 04-20160706
Use Tax
For the Years 2012-2014**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Manufacturer did not provide sufficient documentation to show that the Department's assessment was incorrect.

ISSUE

I. Use Tax - Imposition.

Authority: IC § 6-2.5-5-3; IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-14](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Black's Law Dictionary* 1050 (9th ed. 2009).

Taxpayer protests the assessment of use tax.

STATEMENT OF FACTS

Taxpayer is a manufacturer located in Indiana. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of the company for the tax years 2012-2014. The Department imposed use tax on items used by Taxpayer in Indiana.

Taxpayer protests most items in the audit claiming the items are exempt from use tax as part of an industrial production process. An administrative hearing was held. This Letter of Finding ensues. Additional facts will be provided as necessary.

I. Use Tax - Imposition.

DISCUSSION

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Further, when an agency is charged with enforcing a statute, the courts defer to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference. A taxpayer is required to provide documentation explaining and supporting its challenge that the Department's denial is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

The issue in this instance is whether Taxpayer's transactions are exempt from sales tax on items purchased for the direct use in the direct production of tangible personal property ("TPP"). The Department assessed use tax on several transactions during the audit. Due to the volume of transactions, the Department and Taxpayer agreed to a statistical sample of asset invoices and expense invoices for the period October 1, 2013, through December 31,

2014. The results of the statistical sample concluded in the imposition of use tax in the following categories: building materials, parts used in trial plant runs, computer equipment, tools used in maintenance, raw material delivery system and returnable containers, on site contractors, and cleaning.

Indiana imposes a use tax on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). IC § 6-2.5-5-3(b) provides an exemption from sales tax for "manufacturing machinery, tools, and equipment . . . if the person acquiring the property acquires it for direct use in the direct production [or] manufacture . . . of other tangible personal property. . . ." Under [45 IAC 2.2-3-14\(2\)](#) exemptions that apply to IC § 6-2.5-5 also apply to use tax.

During the hearing, Taxpayer provided a banker's box full of documentation and explanation. The documentation and explanations were sent back to audit for their review. Taxpayer received a supplemental audit report on October 23, 2017. Taxpayer requested until November 31, 2017 to review the auditor's comments and determinations and provide a list of any remaining protested items along with supporting documentation. Taxpayer then requested and was granted another extension until December 31, 2017, to let the Department know if the Taxpayer had any items remaining under protest documentation. Taxpayer again submitted an extension form for January 31, 2018, which was granted. On January 12, 2018 Taxpayer submitted another extension form asking until March 31, 2018. The Department denied Taxpayer's March 31 extension request. Taxpayer had ample time to determine whether any items are still in protest and to locate additional documentation. Taxpayer provided a statement on January 31, 2018, from its General Manager providing a brief description of three categories of disputed items and why they should be exempt. Taxpayer however provided no specific listing of items being protested or any supporting documentation. As stated above, Taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Thus, since Taxpayer has not provided any documentation or explanation supporting its protest, the supplemental audit is determined to be correct. Taxpayer failed to meet its burden under IC § 6-8.1-5-1(c) and any remaining protest is denied.

FINDING

Taxpayer's protest is denied and the results of the supplemental audit are deemed correct.

February 12, 2018

Posted: 04/25/2018 by Legislative Services Agency
An [html](#) version of this document.